

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

LEA MÁRQUEZ PETERSON - Chairwoman
SANDRA D. KENNEDY
JUSTIN OLSON
ANNA TOVAR
JIM O'CONNOR

In the matter of:

TONY ROLAND SPOONER
aka ANTHONY R. SPOONER (CRD
#2187069), and WENDY SPOONER, husband
and wife, and

FIRST FEDERAL SECURITY, INC., an
Arizona company,

Respondents.

DOCKET NO. S-21141A-21-0022

**NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER TO CEASE AND DESIST, ORDER
FOR RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES, AND
ORDER FOR OTHER AFFIRMATIVE
ACTION**

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Tony Spooner and First Federal Security, Inc. have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division also alleges that Tony Spooner is a person controlling First Federal Security, Inc. within the meaning of A.R.S. § 44-1999(B), so that he is jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as First Federal Security for its violations of the antifraud provisions of the Securities Act.

I.**JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.**RESPONDENTS**

2. Tony Spooner ("Spooner") has been an Arizona resident during the relevant time period. Spooner has been a licensed Arizona insurance producer since June 28, 1999. Spooner has not been registered with the Commission as a securities salesman, dealer, or investment advisor.

3. Wendy Spooner was at all relevant times the spouse of Respondent Spooner (Wendy Spooner may be referred to as "Respondent Spouse"). Respondent Spouse is joined in this action under A.R.S. §44-2031(C). At all relevant times, Spooner and Wendy Spooner were acting for their own benefit and on behalf of and for the benefit of the marital community.

4. First Federal Security, Inc. ("First Federal") was a company incorporated under the laws of the state of Nevada on October 15, 2001. It was registered as a foreign, for-profit corporation under the laws of the state of Arizona on November 19, 2001. First Federal was permanently revoked as a corporation in Nevada on or around October 31, 2006. First Federal has been inactive on Arizona since on or around October 31, 2007. Spooner had been an officer and director of First Federal since October 15, 2001, and President since at least October 2, 2002. First Federal was not registered by the Commission as a securities salesman, dealer, or investment advisor.

5. Spooner and First Federal may be referred to collectively as "Respondents."

III.**FACTS**

6. During the relevant time period, Spooner offered and sold services such as estate planning, living trusts, annuities, long term care, and insurance through his company, First Federal.

7. In addition to the aforementioned products, from at least May 2012, Respondents solicited First Federal clients to invest in debentures issued by companies controlled by EquiAlt, LLC, including EquiAlt Fund, LLC ("Fund I"), EquiAlt Fund II, LLC ("Fund II"), EA SIP, LLC, and EquiAlt Secured Income Portfolio REI, Inc. ("REIT").

1 8. Debentures issued by the aforementioned companies will be collectively referred
2 herein as "EquiAlt Debentures." EquiAlt Debentures promised a fixed rate of return ranging from
3 8% to 12% annually, and Investors had the option to either receive payments monthly, annually, or
4 to re-invest their rate of return.

5 9. EquiAlt, LLC, Fund I, Fund II, EA SIP, LLC, and REIT will be collectively referred
6 herein as "EquiAlt," and those who invested in the EquiAlt Debentures will be referred herein as
7 "Investor(s)."

8 10. Respondents sold at least 47 EquiAlt Debentures to Investors, totaling at least
9 \$4,037,266.98 invested. At least 18 Investors were from Arizona. At all relevant times, Spooner was
10 located in Arizona.

11 11. From at least March 2013 through February 2020, Spooner earned commissions for
12 sales of EquiAlt Debentures totaling at least \$774,158.70. Spooner solicited and sold EquiAlt
13 Debentures through First Federal; however, earned commissions were paid either directly to
14 Respondent Spooner or Rokay Unlimited, LLC, of which Spooner is a manager.

15 12. Spooner provided at least some, if not all, of the Investors with marketing material
16 that advertised EquiAlt Debentures as an "[o]ppportunity to make investments in whole distressed
17 Single Family Real Estate focused on equity [sic] on acquisition [sic] buying and buy-to-rent
18 strategies."

19 13. Spooner provided at least some, if not all, of the Investors with EquiAlt's private
20 placement memoranda ("PPMs"), subscription agreements ("Subscription Agreement(s)"), and
21 summary of terms ("Summary of Terms").

22 14. The PPMs and the Summary of Terms stated that Investors would receive between 8-
23 12% return on their principal, which would be paid either monthly, annually, or growth during a 2-
24 to 5-year term. These terms were summarized in the Summary of Terms.

1 15. The PPMs also stated that the purpose of the investment was to generate capital for
2 EquiAlt to “purchase, improve, lease, and/or dispose of distressed real property, enter into
3 opportunistic loan transactions and/or engage in other ventures.”

4 16. The Subscription Agreement outlined the units that the Investors were purchasing at
5 \$10.00 per unit.

6 17. The Subscription Agreement also stated “The Subscriber represents that the
7 Subscriber is an officer, director or equivalent of the Company, and/or is an ‘Accredited Investor,’
8 as such term is defined in Rule 501 of Regulation D promulgated under the Act, and that the
9 Subscriber is able to bear the economic risk of an investment in the Units.”

10 18. As a part of the investment application, Investors were provided with a Prospective
11 Purchaser Questionnaire (“PPQ”). The PPQ required Investors to identify whether they were
12 accredited or unaccredited investors; if they were unaccredited, the PPQ required Investors to provide
13 their net worth and income.

14 19. Spooner completed the PPQ for at least some of the Investors. Barry Rybicki, the
15 President of EquiAlt, told Spooner nobody looks at the PPQ, and to put what he [Spooner] thought
16 he needed to put.

17 20. At least some of the Investors did not have investment experience and/or did not
18 qualify as accredited investors. One Investor was of the understanding she invested in Goldstar, when
19 in actuality Goldstar was the trust company through which her EquiAlt investment was made. This
20 Investor was unaware she had invested in EquiAlt until she received her first statement from EquiAlt.

21 21. At least 16 Investors were in their 60s, 70s, or 80s. According to Spooner, many of
22 his clients were conservative in their investment approach. Because of the age of his clients, “safety
23 was the main concern, and EquiAlt also provided a certain amount of liquidity, which was nice.”

24 22. Spooner told at least one Investor that he had personally invested in EquiAlt, as well
25 as his mother and mother-in-law. Spooner allowed the Investor to look through Spooner’s investment
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1 account with EquiAlt. This disclosure led the Investor to believe the EquiAlt Debentures were a safe
2 investment. However, Spooner had not personally invested in EquiAlt Debentures.

3 23. At least some of the Investors gave their investment money for EquiAlt Debentures
4 directly to Spooner, who submitted it to EquiAlt on their behalf. Spooner also helped facilitate the
5 movement of Investor money from IRAs into EquiAlt.

6 24. At least some of the Investors would be impacted negatively if they lost the money
7 they invested in EquiAlt Debentures. At least one Investor would be severely impacted, as it would
8 impact her retirement.

9 25. On February 11, 2020, the Securities and Exchange Commission ("SEC") filed a
10 complaint in the U.S. District Court for the Middle District of Florida against EquiAlt, Fund I, Fund
11 II, EA SIP, LLC, and related parties. In its complaint, the SEC alleged that EquiAlt has been
12 conducted as a Ponzi scheme since 2011 and has raised over \$170 million from over 1,100 investors.

13 26. On February 14, 2020, the judge in the SEC case issued an order appointing a receiver
14 for EquiAlt to take immediate possession of all EquiAlt property, assets, and estates.

15 **Untrue Statements and Omissions by Spooner and First Federal**

16 27. Subscription Agreements for the EquiAlt Debentures specifically state that the "Units
17 are being sold through the Company without commission." Spooner omitted to tell at least some of
18 the Investors that he was receiving commissions for the sale of the EquiAlt Debentures.

19 28. Spooner misrepresented to at least some Investors the risk involved with investing in
20 EquiAlt Debentures. Spooner told at least one investor EquiAlt Debentures were very safe and were
21 such a good investment, Spooner enrolled his own mother in the investment with EquiAlt. However,
22 EquiAlt Debentures were "highly speculative" and involved a "high degree" of risk.

23 29. Spooner told another Investor EquiAlt would be unaffected by the stock market and
24 losses were mitigated because the homes were purchased 20-50% below market value. Spooner told
25 at least some Investors that EquiAlt was 100% debt free and EquiAlt Debentures were 100% asset
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1 backed. Spooner also described EquiAlt as “flush and ready to expand.” In actuality, EquiAlt was
2 operating at a loss and using Investor money in new funds to pay Investors in previous funds.

3 30. Spooner misrepresented to at least some, if not all, Investors the liquidity of the
4 EquiAlt Debentures. Spooner represented that EquiAlt provided “a certain amount of liquidity” even
5 though the Subscription Agreement stated “the Subscriber may not be able to liquidate his, her, or its
6 investment.”

7 31. Spooner misrepresented to at least some Investors the registration status of EquiAlt
8 Debentures. Spooner told at least one Investor the EquiAlt Debentures were not registered as
9 securities because the amount of money being brought in was below the limit set by the SEC for a
10 managed fund. The Subscription Agreement stated EquiAlt Debentures are “intended to be exempt
11 from the registration requirements of Section 5 of the Act.”

12 32. Spooner misrepresented to at least one Investor that he had personally invested in
13 EquiAlt Debentures. Spooner made no personal investments in EquiAlt Debentures.

14 33. Spooner misrepresented to at least some Investors that he was the President of First
15 Federal. Sometime in 2018, Spooner provided at least one Investor with his business card naming
16 himself as such; however, First Federal was not an active corporation and had not been in over a
17 decade.

18 IV.

19 VIOLATION OF A.R.S. § 44-1841

20 (Offer or Sale of Unregistered Securities)

21 34. From on or about May 2012, Respondents offered or sold securities in the form of
22 debentures, notes, or evidence of indebtedness within or from Arizona.

23 35. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
24 Securities Act.

25 36. This conduct violates A.R.S. § 44-1841.
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V.**VIOLATION OF A.R.S. § 44-1842****(Transactions by Unregistered Dealers or Salesmen)**

37. Respondents offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

38. This conduct violates A.R.S. § 44-1842.

VI.**VIOLATION OF A.R.S. § 44-1991****(Fraud in Connection with the Offer or Sale of Securities)**

39. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

a) Respondents misrepresented and/or omitted to at least some of the Investors that commissions would not be paid, when in fact they had received at least \$774,158.70 in commissions from the sale of EquiAlt Debentures;

b) Respondents misrepresented and/or omitted to at least some of the Investors the risk involved with investing in EquiAlt Debentures. Respondents represented EquiAlt Debentures were safe and there were no risks, when in fact the PPM stated that these were highly speculative investments;

c) Respondents misrepresented to at least some Investors that EquiAlt was debt-free and the investments were 100% asset backed, when in actuality, EquiAlt was operating at a loss;

d) Respondents misrepresented to at least some Investors the liquidity of the EquiAlt Debentures. Specifically, Respondents represented to Investors that the EquiAlt Debentures had

1 a certain amount of liquidity when in actuality, the Investor may not be able to liquidate the investment
2 until it termed;

3 e) Respondents misrepresented to at least some Investors that EquiAlt Debentures
4 were not registered because the investment amount was below the SEC threshold, when in actuality the
5 EquiAlt Debentures were required to be registered;

6 f) Respondents misrepresented to at least some of the Investors that Spooner had
7 personally invested in EquiAlt Debentures. Spooner had no personal investment in EquiAlt; and

8 g) Respondents misrepresented to at least some Investors that First Federal was an
9 active company and Spooner was the President of the company. First Federal had not been an active
10 company in Nevada or Arizona for approximately a decade.

11 40. This conduct violates A.R.S. § 44-1991.

12 **VII.**

13 **CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999**

14 41. From at least October 15, 2001 through the present, Spooner has been and/or held
15 himself out as an officer, director, and/or President of First Federal.

16 42. From at least October 15, 2001 through the present, Spooner directly or indirectly
17 controlled First Federal within the meaning of A.R.S. § 44-1999. Therefore, Spooner is jointly and
18 severally liable to the same extent as First Federal for its violations of A.R.S. § 44-1991 from at least
19 October 15, 2001 through the present.

20 **VIII.**

21 **REQUESTED RELIEF**

22 The Division requests that the Commission grant the following relief:

23 1. Order Respondents to permanently cease and desist from violating the Securities Act
24 pursuant to A.R.S. § 44-2032;

2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that Respondent and Respondent Spouse be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action.

5. Order any other relief that the Commission deems appropriate.

IX.

HEARING OPPORTUNITY

Each Respondent, including Respondent Spouses, may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting Respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's website at <http://www.azcc.gov/hearing>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Carolyn D. Buck, ADA Coordinator, voice phone number (602) 542-3931, e-mail cdbuck@azcc.gov. Requests should

1 be made as early as possible to allow time to arrange the accommodation. Additional information
2 about the administrative action procedure may be found at
3 <http://www.azcc.gov/securities/enforcement/procedure>.

4 **X.**

5 **ANSWER REQUIREMENT**

6 Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing,
7 the requesting Respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing
8 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
9 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
10 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site
11 at <http://www.azcc.gov/hearing>.

12 Additionally, the answering Respondent must serve the Answer upon the Division. Pursuant
13 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
14 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
15 addressed to Elizabeth Schmitt.

16 The Answer shall contain an admission or denial of each allegation in this Notice and the
17 original signature of the answering Respondent or Respondent's attorney. A statement of a lack of
18 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
19 denied shall be considered admitted.

20 When the answering Respondent intends in good faith to deny only a part or a qualification
21 of an allegation, the Respondent shall specify that part or qualification of the allegation and shall
22 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

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The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 29th day of January, 2021.

/s/ Mark Dinell
Mark Dinell
Director of Securities